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4 MARKUP ON H.R. 805, THE DOMAIN OPENNESS THROUGH CONTINUED
5 OVERSIGHT MATTERS ACT OF 2015
6 WEDNESDAY, JUNE 10, 2015
7 House of Representatives,
8 Subcommittee on Communications and Technology
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:06 a.m.,
12 in Room 2123 of the Rayburn House Office Building, Hon. Greg
13 Walden [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Walden, Latta,
15 Shimkus, Blackburn, Lance, Guthrie, Pompeo, Kinzinger,
16 Bilirakis, Johnson, Long, Elmers, Collins, Eshoo, Doyle,
17 Welch, Loeb sack, Matsui, McNerney, and Pallone (ex officio).

18 Staff present: Ray Baum, Senior Policy Advisor for

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19 Communications and Technology; Leighton Brown, Press
20 Assistant; Karen Christian, General Counsel; Andy Duberstein,
21 Deputy Press Secretary; Gene Fullano, Detailee, Telecom;
22 Kelsey Guyselman, Counsel, Telecom; Brittany Havens,
23 Oversight Associate, Oversight and Investigations; Peter
24 Kielty, Deputy General Counsel; Grach Koh, Counsel, Telecom;
25 Graham Pittman, Legislative Clerk; David Redl, Counsel,
26 Telecom; Charlotte Savercool, Legislative Clerk; Jessica
27 Wilkerson, Oversight Associate, Oversight and Investigations;
28 Jen Berenholz, Democratic Chief Clerk; Christine Brennan,
29 Democratic Press Secretary; Jeff Carroll, Democratic Staff
30 Director; Elizabeth Ertel, Democratic Deputy Clerk; David
31 Goldman, Democratic Chief Counsel, Communications and
32 Technology; Ashley Jones, Democratic Director of
33 Communications, Member Services and Outreach; Lori Maarbjerg,
34 Democratic FCC Detailee; Margaret McCarthy, Democratic Senior
35 Professional Staff Member; Tim Robinson, Democratic Chief
36 Counsel; and Ryan Skukowski, Democratic Policy Analyst.

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37 Mr. {Walden.} We will call to order the Subcommittee on
38 Communications and Technology. And I want to say, from the
39 day that the Administration announced the intent to
40 transition the IANA functions, this Subcommittee has been
41 committed to oversight of the transition process, and
42 ensuring that there are appropriate safeguards in place to
43 improve the odds of a successful transition, and preserve the
44 Internet as we all are committed to protecting. Since that
45 time we have held multiple hearings on this topic, and heard
46 from many perspectives. We have passed the original Dot Com
47 Act out of the full Committee more than a year ago, a bill
48 that would have required NTIA to pause up until--pause until--
49 -for 1 year while GAO completed a report. Though there was
50 disagreement about that bill's approach at the time, over the
51 past year we have continued our examination of this issue,
52 and remain committed to finding a workable solution.

53 At our May hearing on IANA transition, all of our
54 witnesses were in agreement that there is a role for Congress
55 to play in the transition. Exercising our oversight of NTIA,
56 we have the ability to ensure that any transition proposal is
57 fully vetted, and that a robust discussion takes place prior
58 to the hands off of the IANA functions. While NTIA works

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59 within its proper role in the multi-stakeholder model, we too
60 are working with our--within our proper role as oversight
61 authority. Given the feedback from our hearings, and through
62 productive negotiations with our Democratic counterparts,
63 especially want to thank the Ranking Member, Mr. Pallone, for
64 his efforts, we have formulated a bipartisan piece of
65 legislation that acknowledges Congressional oversight, while
66 respecting the multi-stakeholder community's process. The
67 substitute amendment we are considering today is a sensible
68 and reasonable path forward. We continue to have strong
69 interest in avoiding the potential harmful outcomes of this
70 transition, and this is an important step toward that goal.

71 In addition to this legislation, last year we asked the
72 Government Accountability Office to complete a report on the
73 impact of the proposed transition. Specifically, we
74 requested that they look at risks associated with the
75 transition, commitments that exist in the current ICANN
76 contract, and any additional criteria that NTIA should
77 consider when evaluating the proposal. We look forward to
78 reviewing that report this summer, and hope to see their
79 findings considered as part of the transition process.

80 Throughout this process we have done our best to be
81 cognizant of the impact and appearance of our actions on the

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82 international stage. We recognize these considerations, but
83 we also feel it would be irresponsible to ignore the very
84 real risks associated with relinquishment of the U.S. role in
85 Internet governance, no matter how symbolic. This is why we
86 have taken the measured approach we will discuss today.

87 The NTIA put forward a set of criteria that they say any
88 acceptable transition proposal must meet, all of which are
89 essential to ensuring a vibrant Internet, should NTIA
90 transition IANA to the multi-stakeholder community. NTIA
91 should be applauded for this, and for its willingness to
92 stick to these criteria, despite the difficulty in meeting
93 them. Our goal through this legislation, and our efforts in
94 the Subcommittee, is to ensure that these conditions are met,
95 and that the myriad of unforeseen complications are
96 addressed.

97 In addition to the original four criteria, NTIA added
98 the requirement that ICANN must improve its accountability to
99 the Internet community. This bill addresses this by
100 requiring NTIA to certify that the changes put forth by the
101 multi-stakeholder community--multi-stakeholder accountability
102 group have been implemented. A strong and accountable
103 governing body is a necessary pre-requisite for a tenable
104 long term successor to the U.S. Government's stewardship. I

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105 believe that if it is signed into law by the President, this
106 bipartisan legislation represents an alternative to a funds
107 limitation that would achieve our shared goal, that is,
108 preventing harm to the Internet as we know it. Ensuring an
109 oversight role for Congress adds another check to this
110 process, and emphasizes that the United States takes this
111 transition seriously.

112 I thank my Democratic colleagues for working with us,
113 and Mr. Shimkus for his tireless efforts and thoughtful work
114 on this issue last year.

115 [The prepared statement of Mr. Walden follows:]

116 ***** COMMITTEE INSERT *****

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117 Mr. {Walden.} With that, I would recognize my friend
118 from California, the Ranking Member of the Subcommittee, Ms.
119 Eshoo, for opening comments.

120 Ms. {Eshoo.} Thank you, Mr. Chairman. Over the past 2
121 decades U.S. policy, through Republican and Democratic
122 administrations, have supported the transition of the
123 Internet Assigned Numbers Authority, IANA, to the private
124 sector. In conjunction with this support has been a
125 longstanding and bipartisan commitment by Congress to a
126 global open Internet free from governmental control. The
127 agreement reached today carries on this bipartisan tradition
128 by ensuring that the IANA transition supports and enhances
129 the multi-stakeholder model of Internet governance, maintains
130 the security, the stability, and the resiliency of the
131 Internet Domain Name System, and does not replace the role of
132 the NTIA with a government led or inter-governmental
133 organization solution.

134 These core principles have enabled the growth of the
135 Internet as an unparalleled platform for economic opportunity
136 and Democratic participation. In carrying out the IANA
137 transition, I wholeheartedly agree with my colleagues that
138 there must be built-in mechanisms for transparency and

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139 accountability, and a commitment by ICANN to resist any
140 expansion of the role governments or inter-governmental
141 organizations may play in ICANN's deliberations. Members on
142 both sides of the aisle have stated their support for these
143 principles, and the amendment in the nature of a substitute
144 ensures that there is a mechanism at--in place for public
145 review before the transition is completed.

146 I thank Chairman Walden and Congressman Shimkus for
147 working with my staff to craft a legislative proposal that
148 promotes transparency, accountability, and reaffirms our
149 commitment to the IANA transition. I think this is something
150 that colleagues on both sides of the aisle can support in the
151 amendment that is in the nature of a substitute, which is a
152 vote to carry out the extraordinary success story that the--
153 that is the Internet, ensuring that billions of people around
154 the world will continue to benefit from everything it has to
155 offer. So with that, I yield back, Mr. Chairman.

156 [The prepared statement of Ms. Eshoo follows:]

157 ***** COMMITTEE INSERT *****

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158 Mr. {Walden.} Gentlelady yields back the balance of her
159 time. For members on our side of the aisle, Mr.--the Vice
160 Chair of the Committee, Mr. Latta, is recognized for I think
161 1 minute.

162 Mr. {Latta.} Well, thank you very much, Mr. Chairman.
163 Thanks for holding this markup today. The bill before us
164 today, and the soon to be proposed amendment introduced by my
165 friend, the gentleman from Illinois, seeks to preserve the
166 Internet's openness and freedom by ensuring proper oversight
167 of the U.S. Government's role in Internet's--functions during
168 its transition to a global multi-stakeholder community.
169 While I support the--this transition, I also want to make
170 sure that it is properly executed and meets the standards
171 established by the NTIA. That is why I support the Dot Com
172 Act. This bill ensures that NTIA's responsibilities over the
173 Internet's Domain Name System function will not relinquished
174 until evaluation and analysis of the transition are conducted
175 and reported by the GAO. By placing safeguards on this
176 transition, Congress can better maintain our national
177 security interests to continue to allow citizens fully to
178 navigate the Internet.

179 And with that, Mr. Chairman, I yield back the balance of

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180 my time.

181 [The prepared statement of Mr. Latta follows:]

182 ***** COMMITTEE INSERT *****

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183 Mr. {Walden.} The gentleman yields back the balance of
184 his time. The Chair recognizes the gentleman from New
185 Jersey, the Ranking Member of the full Committee, Mr.
186 Pallone.

187 Mr. {Pallone.} Thank you, Mr. Chairman, and thank our
188 Ranking Member, Ms. Eshoo, also. Today's markup is an
189 example of what this Committee can accomplish when we work in
190 a truly bipartisan manner, and I want to thank you and
191 Representative Shimkus for working with the Democrats to find
192 a smart solution that works for everyone.

193 Republicans and Democrats in Congress have long been
194 united in our support for the multi-stakeholder model of
195 Internet governance. For 3 decades the U.S. Government has
196 been moving towards greater private sector management of the
197 Domain Name System, and the transition of the Internet
198 Assigned Numbers Authority, or IANA, is a continuation of our
199 commitment to the privatization of the Domain Name System,
200 first initiated in the 1990s.

201 The stakes for this transition are high because the
202 Internet is such a central part of the global economy and
203 society. But if it is done right, the billions of people
204 around the world that use the Internet shouldn't even notice.

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205 The National Telecommunications and Information
206 Administration has laid out clear principles for the
207 transition in keeping with our commitment to the multi-
208 stakeholder model and an open, global Internet. Congress's
209 job is to make sure that NTIA lives up to these commitments.
210 I believe the working groups convened by the Internet
211 Corporation for Assigned Names and Numbers, ICANN, are moving
212 in the direction of these goals, and we must ensure that
213 ICANN remains accountable after NTIA's stewardship role ends.

214 The--in--the bipartisan substitute amendment to the Dot
215 Com Act that we are offering today does just that. We are
216 conducting the necessary and appropriate Congressional
217 oversight of NTIA, while renewing our commitment to an
218 Internet free from governmental control. I believe the Dot
219 Com Act is a better alternative to placing funding
220 restrictions on NTIA that prevent the agency from
221 implementing the transition.

222 I urge all my colleagues to support the substitute
223 amendment. I also encourage our colleagues in the Senate to
224 move quickly and get this bill to the President's desk. A
225 vote for the Dot Com Act is a vote for a responsible IANA
226 transition, and the continued success of the free and open
227 Internet. I yield back.

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228 [The prepared statement of Mr. Pallone follows:]

229 ***** COMMITTEE INSERT *****

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230 Mr. {Walden.} Gentleman yields back the balance of
231 time. The Chair recognizes the author of this legislation,
232 who has done incredible work on it, the gentleman from
233 Illinois, Mr. Shimkus.

234 Mr. {Shimkus.} Thank you, Mr. Chairman. A personal
235 thanks to you for your help and support. I appreciate it.
236 And to Ranking Member Pallone and Ranking Member Eshoo, you
237 are right, this has been a longstanding bipartisan movement
238 on this transition, and I think we are at a better place with
239 your help, and I want to thank you for that. I want to give
240 my thanks also to David Goldman and David Rettle [ph],
241 Margaret McCarthy, and my own Greta Joins [ph] for their
242 work, because they are the ones hashing out the deals, and
243 talking the language, and we couldn't do it without you.

244 This has always been about oversight and our proper
245 role, having oversight of the NTIA. This is a big deal, and
246 we, you know, if we don't get it right, we have lost it. And
247 so that is--for those of us who have been trying to make sure
248 we took measured steps, that was our intent. And I--again,
249 as I said, I think we are in a better place. I want to thank
250 my colleagues for their support, and I look forward to moving
251 the legislation. I yield back.

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252 [The prepared statement of Mr. Shimkus follows:]

253 ***** COMMITTEE INSERT *****

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254 Mr. {Walden.} Chair now recognizes the gentlelady from
255 California, Ms. Matsui.

256 Ms. {Matsui.} Thank you, Mr. Chairman. Mr. Chairman, I
257 rise in support of this bipartisan compromise we are
258 considering today. In 2012, with strong bipartisan
259 Congressional backing, the Administration's position was
260 strengthened in reaffirming the current multi-stakeholder
261 approach that has allowed the Internet to flourish here in
262 the United States, and around the world. Congress must stay
263 united moving forward.

264 I am pleased that we are continuing to stay united, and
265 demonstrate to the international community that we are--will
266 not support any proposal that undermines the openness of the
267 Internet. With over two billion users, the Internet has
268 become a necessity, not a luxury. It plays a dominant role
269 in the world economy. We need to continue to promote
270 innovation and openness of the Internet around the globe.
271 That has been the hallmark of U.S. policy.

272 I believe the multi-stakeholder approach must continue
273 to define Internet governance. I support this bipartisan
274 compromise, and I yield back the balance of my time.

275 [The prepared statement of Ms. Matsui follows:]

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277 Mr. {Walden.} The gentlelady yields back the balance of
278 her time. The Chair now recognizes the Vice Chair of the
279 full Committee, Ms. Blackburn, for 1 minute.

280 Mrs. {Blackburn.} Thank you, Mr. Chairman. I want to
281 thank you, and Mr. Shimkus, and all the staff members who
282 have been involved in a bipartisan compromise and--on this
283 amendment. I think all of us are very concerned about what
284 we see happening with ICANN, and with the IANA contract. We
285 need that checklist of items that have to be done right
286 before there is further discussion, so we are pleased with
287 this.

288 One of the things that does concern me about ICANN is
289 the registries and the registrars, that they are not abiding
290 by the current provisions in their own public interest
291 commitments and the registrar accreditation agreement. And
292 these contractual agreements were created through the multi-
293 stakeholder process, and under them ICANN, the registries,
294 and the registrars must prohibit domain name holders from
295 engaging in illegal activity, and must investigate the
296 violations that they think are there, or that are found to be
297 there in those claims.

298 And before we sign off on the transition, it is an

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299 imperative that we tend to these items. I thank you, and I

300 yield back.

301 [The prepared statement of Mrs. Blackburn follows:]

302 ***** COMMITTEE INSERT *****

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303 Mr. {Walden.} I thank the gentlelady. The Chair
304 recognizes the gentleman from California, Mr. McNerney, for
305 opening comments.

306 Mr. {McNerney.} Thank you, Mr. Chairman. This is an
307 important issue. It is critical to keep the Internet free
308 and open, and I want to thank the Chairman, and Mr. Shimkus,
309 and others that were involved in the process. And I want to
310 say that this is the way things are supposed to run.
311 Principles were laid out, bipartisan cooperation ensued, we
312 have something that we can agree on.

313 People back home, they--when they watch TV, they say,
314 you guys can't get anything done. Well, I will tell you
315 what, we are getting stuff done right here in this Committee.
316 This is an example. Century 21 Cures is another example.
317 Pay attention, folks, things are getting done here in
318 Washington. Mr. Chairman, I yield back.

319 [The prepared statement of Mr. McNerney follows:]

320 ***** COMMITTEE INSERT *****

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321 Mr. {Walden.} Actually, I would like you to continue

322 on. I ask unanimous consent for another 5 minutes.

323 Now we go to the--let us see, Mr. Guthrie is not here.

324 Let us go to Mr. Kinzinger for--no. Mr. Bilirakis? No, he

325 waives. Mr. Johnson? No opening comments? Mr. Pompeo,

326 opening comments? Ms. Ellmers, opening comments? Mr.

327 Collins? No, no. Anyone else? Okay. Well, with that--Mr.

328 Lance? No, he stepped out. And Mr. Guthrie is out. Okay.

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329 H.R. 805

330 Mr. {Walden.} Then the Chair now calls up H.R. 805 and
331 asks the Clerk to report.

332 The {Clerk.} H.R. 805, to prohibit the National
333 Telecommunications and Information Administration from
334 relinquishing responsibility over the Internet Domain Name
335 System until the Comptroller General of the United States
336 submits to Congress a report on the role of the NTIA with
337 respect to such systems.

338 [The bill follows:]

339 ***** COMMITTEE INSERT *****

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340 Mr. {Walden.} Without objection, the first reading of
341 the bill is dispensed with, and the bill will be open for
342 amendment at any point, so ordered.

343 The Chair now recognizes Mr. Shimkus for the purpose of
344 offering an amendment in the nature of a substitute.

345 Mr. {Shimkus.} Thank you, Mr. Chairman. I have an
346 amendment at the desk.

347 Mr. {Walden.} The Clerk will report the amendment.

348 The {Clerk.} Amendment in the nature of a substitute to
349 H.R. 805 offered by Mr. Shimkus, Mr. Walden, Mr. Pallone, and
350 Ms. Eshoo.

351 [The amendment of Mr. Shimkus, Mr. Walden, Mr. Pallone,
352 and Ms. Eshoo follows:]

353 ***** INSERT 5 *****

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354 Mr. {Walden.} Without objection, the reading of the
355 amendment is now dispensed with, and the Chair recognizes
356 himself for 5 minutes in support of the amendment, but I
357 would actually yield to the gentleman from Illinois, other
358 than to just thank again my colleagues on both sides of the
359 aisle for their good work in this effort. I think I will let
360 my opening statement stand, and yield to Mr. Shimkus.

361 Mr. {Shimkus.} Thank you, Mr. Chairman. I won't take
362 very much time either. Most of the stuff was mentioned, and
363 I am always concerned when you strike after an enacting
364 clause, which means you are writing a whole new bill, and you
365 are placing something in, which is really what we have done.
366 We looked at the requirements laid out by the NTIA. We said
367 we have a significant role in doing that. I think the other
368 add was these other groups that are involved in ensuring a
369 transition, we are going to have also a look at that. I
370 think that is going to be very, very helpful.

371 One of the big things to remember too is we didn't want
372 the contract to lapse. And I think when we had the hearing,
373 most people were concerned about the contract lapsing, and
374 then there would be more disarray. So, again, I thank my
375 colleagues for helping and joining us, Congresswoman Eshoo

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376 and Congressman Pallone for their support, and you, Chairman,
377 for leading us on our merry way. And with that I yield back
378 our time.

379 Mr. {Walden.} Gentleman yields back. Anyone else
380 seeking recognition in support of the amendment, or
381 opposition?

382 Seeing none, if there are no more amendments, the vote
383 now occurs on the amendment in the nature of a substitute.

384 All those in favor shall signify by saying aye.

385 All those opposed, nay.

386 The ayes have it, and the amendment is agreed to.

387 The question now occurs on forwarding H.R. 805, as
388 amended, to the full Committee.

389 All those in favor say aye.

390 All those opposed, nay.

391 The ayes have it, and the bill is favorably reported.

392 Without objection, the staff is authorized to make
393 technical and conforming changes to the legislation approved
394 by the Subcommittee today. So ordered. And, again, I want
395 to thank our colleagues for their great work on this measure.
396 I think it is important for the country, and another great
397 bipartisan movement forward for our Subcommittee.

398 Without objection, the Subcommittee now stands

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399 adjourned.

400 [Whereupon, at 10:25 a.m., the Subcommittee was

401 adjourned.]